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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARVIN SMITH,

Plaintiff,

vs.

CAPITAL ONE FINANCIAL CORP.,

Defendant.

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

1. TCPA, 47 U.S.C. § 227

(Unlawful Debt Collection Practices)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Marvin Smith ("Plaintiff"), through his attorneys, alleges the following against Defendant Capital One Financial Corp. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based upon the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic dialers

or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission ("FCC").

JURISDICTION AND VENUE

2. Jurisdiction of the Court arises under 47 U.S.C. § 227.
3. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)* in that a substantial part of the events or omissions giving rise to the claim occurred in this District. Because Defendant transacts business here, personal jurisdiction is established.

PARTIES

4. Plaintiff is a natural person residing in Woodland Hills, Los Angeles County, California.
5. Defendant is a Banking institution engaged in the business of issuing credit cards with its principal place of business located at 1680 Capital One Drive, #1400, McLean, VA 22102-3491.
6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

7. Defendant is attempting to collect a debt from Plaintiff.
8. In or around September 2014, Defendant began placing calls to Plaintiff's cellular phone number (818) 633-2745, in an attempt to collect an alleged debt.
9. Upon information and belief, the calls mainly originated from (800) 955-6000; these numbers are owned or operated by Defendant.

10. On or about December 9, 2014, Plaintiff answered a collection call from Defendant originating from telephone number (800) 955-6000. Plaintiff heard a pause before the collection agent began to speak, indicating the use of an automated telephone dialing system.

11. Defendant informed Plaintiff that it was attempting to collect a debt.

12. Plaintiff instructed Defendant that he did not have any money to pay debt and unequivocally revoked consent to be called any further.

13. Between December 23, 2014 and December 30, 2014, Defendant proceeded to willfully call Plaintiff on his cellular phone approximately ten (10) times from telephone number (800) 955-6000.

14. Between January 1, 2015 and January 31, 2015, Defendant willfully called Plaintiff approximately forty-five (45) times.

15. Between February 1, 2015 and February 28, 2015, Defendant willfully called Plaintiff approximately thirty-four (34) times.

16. Between March 1, 2014 and March 3, 2015, Defendant willfully called Plaintiff no less than five (5) times.

17. Between December 2014 and March 3, 2015, Defendant contacted Plaintiff approximately one-hundred (100) times on his cellular phone despite Plaintiff having unequivocally revoked consent for such calls.

18. Plaintiff uses his cellular phone as his primary telephone and the incessant calls by Defendant caused Plaintiff to endure emotional distress and severe mental anguish.

COUNT I

(Violations of the TCPA, 47 U.S.C. § 227)

19. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

20. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

   a. Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

   b. Within four years prior to the filing of this action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

21. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars ($500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant

knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars ($1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

22. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

WHEREFORE, Plaintiff Marvin Smit respectfully requests judgment be entered against Defendant, Capital One Financial Corp. for the following:

A. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C).

B. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

Dated: March 9, 2017

By:/s/ Stuart Price

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